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ABSTRACT

The civil libertarian aspects of the National Program for Library and Information Science are analyzed. The five assumptions on which the program is based are closely examined for their references to the word "right." Details are given of the historic development of the library profession's increasing concern for the protection of constitutionally sanctioned liberties: the right of full freedom of expression, the right of privacy, and the right to know. The philosophical and practical aspects of the problem of separating federal support for a national network from federal control over the information contained therein are discussed, and reexamination of some of the program's assumptions is suggested. A chronology of events relating to intellectual freedom and privacy in the last 25 years is appended. (Author/PF)

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INTELLECTUAL FREEDOM AND PRIVACY:

COMMENTS ON A NATIONAL PROGRAM FOR LIBRARY AND INFORMATION SERVICES

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rostulates the safeguards needed in future Federal legislation to ensure individual privacy and avoid Federal controls. Analyses is based on the second draft of the NCLIS Program Document.

DECEMBER, 1974

The views expressed are those of the author and do not necessarily reflect the position or policy of the NCLIS. Though related to the Commission's National Program, papers in this series are not an integral part of the National Program Document.

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Prefatory Note

The author of this Commissioned Paper has served since 1971 as a member of the Intellectual Freedom Committee of the American Library Association, and since 1973 as its Chairman. Her term expires with the June 1975 conference of the ALA. By reason of her office she also serves as a member of the Board of Directors of the Freedom to Read Foundation. Although of necessity this paper deals with matters relating to ALA policy, the author wishes to emphasize that this paper in no way should be construed as an official statement of the Committee, the Association, or the Foundation.

An acknowledgment is also in order here. When originally asked in the summer of 1974 to write this paper, the author contemplating a year of doctoral study with all of its attendant assignments reluctantly but firmly declined. Were it not for the generosity of Dan M. Lacy, a former member of the National Advisory Commission for Libraries, who accepted this paper in lieu of the assignment normally required for students in his graduate course, Modern Book Publishing, the following could neither have been attempted nor realized.

> The network of libraries in this country has been established to give the people of any nationality living in any part of the country equal access to the library. . . . Library service is organized according to the following general principles: a) general accessibility of libraries, b) planned distribution of libraries in the country, c) organization of the libraries in an integrated system.[1]

To the casual reader in the United States familiar with library literature the above quotation might seem a restatement of some of the ideas incorporated in the draft document of the National Commission on Libraries and Information Science entitled A National Program for Library and Information Services. Such a reader might be surprised to learn, however, that the quotation is taken from a speech delivered in the late 1960s at the Toronto conference of the International Federation of Library Associations by the late J. P. Kondakov, then librarian of the Lenin State Library in Moscow. In a country then comprising 400,000 libraries and some 110,000,000 readers, the integration of libraries, their geographical distribution, and their accessibility had indeed become important national issues, especially when the client needs of users as diversely situated as the cattle-breeders of the steppe, the fishermen of the Caspian Sea, and the reindeer-breeders of the frozen north were all to be met within the geographical confines of one nation. The reader might have been less easily confused had another selection from

this same address been made. "Libraries and librarianship," Kondakov observed, "have become an integral part of the cultural framework of the nation and have assumed a state character."

This latter phrase, "a state character," gives the whole show away and points to the particular and distinctive problem facing the National Commission in its task, i.e., the promotion of national cohesiveness to a library and information service essentially local in character and traditionally committed to a "hands-off" policy where the power of government could interfere in the selection of reading materials or in the identification of those who make use of them. That the position of the Commission is antithetical to a state-assumed national library and information network is the rationale behind the fifth of the Commission's five assumptions:

> . . . that legislation can be devised for the coherent development of library and information services that protects personal privacy and intellectual freedom, and preserves maximum possible local, state, and regional autonomy.

This paper speaks to the civil libertarian aspects of the proposed National Program. These aspects are, in Hamlet's phrase, "more honored in the breach than the observance," since scant mention is made of them in the document. Since civil rights and liberties, however, are an important part of this particular Commissioned Paper, the author has been extremely sensitive to note the usage of the word "right" throughout the

Program and to take issue where its use seems inappropriate or might cause confusion.

The National Program's Five Major Assumptions

The National Commission predicates its Program on five basic assumptions, two of which specifically mention "right" or "rights": ". . . all the people of the United States have the right . . . to realistic and convenient access to this national resource . . ." and ". . . the rights and interests of authors, publishers, and other providers of information be incorporated into the National Program in ways which maintain their economic and competitive viability." (Emphasis added.) Were this document not to be issued under the aegis of a Federally supported body, the use of "right," when referring to equal access to informational materials, might seem merely a matter of semantic reinforcement. But in a document purporting to set down national policy, a "right" takes on a considerably different meaning. In the latter case, then, the word as it is used in the Commission's second assumption seems misapplied.

The point needs amplification. The concept of equality of access to informational materials stems in part from the general ferment of the 1960s over the equalization of educational opportunity for the nation's student population. The phrase itself, "equality of educational opportunity," is derived from a number of major Supreme Court rulings dating back to the early

1950s when lower-court decisions barring Negro students from attending all-white graduate or professional schools were struck down. In 1954, in Brown v. Board of Education, Chief Justice Warren specifically cited educational opportunity as "a right which must be available to all on equal terms." As a result of this now historic decision, the nation's highest court declared that segregated public schools were unconstitutional. The phrase subsequently became the title of an important study prepared by Professor James S. Coleman and his colleagues at the behest of the Congress,[2] was used by the Senate in authorizing on February 19, 1970 a "Select Committee on Equality of Educational Opportunity," and repeatedly appeared in the Presidential statements of both Lyndon B. Johnson and Richard M. Nixon.

More recently, however, the Supreme Court has issued rulings which have re-examined this so-called "right," and in 1973 when speaking for the majority in San Antonio v. Rodriquez, Associate Justice Powell qualified the Court's earlier decisions by stating:

> It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. . . . The answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution. . . . Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.[3]

In light of this interpretation that the "right" to equal educational opportunity is one not afforded Constitutional protection, the Commission may wish to re-assess the wording of their second assumption. Although it is true that the Federal government itself uses the word "right" in a non-Constitutional context, such as in reference to the "right to read," its usage in this regard refers to the promotion of a national goal to achieve maximum literacy on the part of the American public through the use of Federal funds rather than to a right afforded Constitutional protection. Lacking Constitutional sanction and as yet without the Federal monetary support sufficient to sustain it, the "right" of convenient and realistic access to the nation's library and informational resources may seem to others an overstatement of what must still remain at best a desired objective or goal. The difficulty in using the word "right" here is only compounded by the enumeration of other "rights" which are either explicitly stated or suggested by implication in the Commission's remaining assumptions. These refer to copyright,[4] which is afforded Constitutional protection, and the rights of intellectual freedom and privacy, which are also guaranteed such protection, most particularly by the First and Fourth Amendments.

Intellectual Freedom

The First Amendment to the Constitution mandates that Congress shall make no law "abridging the freedom of speech, or

of the press." Since 1791, the First Amendment has afforded Constitutional protection for the freedom of expression. It must be realized, of course, that the framers of the First Amendment lived in an era when hand presses made available only a very limited number of books, newspapers, and broadsheets for the relatively small proportion of the population literate or interested enough to make use of them. Since that time, however, judicial interpretations have extended First Amendment protections to films, broadcasts, and mass-marketed books, all parts of what are now called the mass media. When contrasted to the immense power of the broadcast media and the weight of the publishing industry itself, the dissemination efforts of libraries may seem a matter of only tertiary concern. Yet libraries have occupied a somewhat unique position in the preservation of intellectual freedom. As attorney William D. North has expressed their function:

> Through libraries, citizens are provided essentially free access to books, periodicals, magazines, records, microfilms, pamphlets, films and other materials which they desire or require to satisfy their intellectual, emotional, recreational or professional interests.
>
> In providing this service in the free society mandated by our Constitution, it is and has been the traditional responsibility of libraries to make available books and other materials presenting all points of view concerning the problems, issues and attitudes of the times. Libraries and librarians have, therefore, historically resisted efforts to limit their collections to only those materials reflecting attitudes, ideas and literary styles bearing the imprimatur of governmental authority or the approval of a prevailing majority of

> the populace. As a result, the American library has become, in many respects, the nation's most basic First Amendment institution. Indeed, libraries serve as a primary resource for the intellectual freedom required for the preservation of a free society and a creative culture.[5]

It would be absurd to present the history of American librarianship as one long battle against the encroachment of a censorial government or the repressive efforts of pressure groups. Basically, the libertarian stance of the First Amendment's framers has been vindicated by the courts, and probably no nation in the world has enjoyed the full freedom of expression as manifestly as the United States. Yet, at the same time, the censor is not an unknown specter in this country, and libraries especially those supported by taxes for the use of the general public have been known to have suffered from his visitations.

The historian Sidney Ditzion has noted that there is very little documentation regarding public library censorship through the nineteenth century:

> This absense of materials may lead to one of many conclusions: There may not have been enough censorship to mention; it may have been so powerful as to demand complete acquiescence; or, more plausible than either of these, the process of conformity on the part of librarians may have been so subtle, so natural, that it did not occur to anyone to remark on the subject. Librarians after all were public servants and, from what we can know of them, they rarely injected into their work preferences other than those expressly made known by communities and their influential leaders.

> The provocation of censorship may not even have been sufficiently in evidence to raise the question.[6]

With the advent of the twentieth century, however, a number of changes occurred which made libraries more vulnerable to attack from community pressure groups and even governmental proscription. The educational reforms of the later nineteenth century and the rise of a popular press both contributed toward the spawning of new generations of American citizens sufficiently literate to make use of the products that were priced within their purchasing power by a burgeoning publishing industry. Then, too, the position of the librarian had changed. Far from the clerk who had presided over the circulating libraries of the past, the librarian was now increasingly recognized as a professional, having achieved from his board the right to select books and other materials under their general policy direction. And lastly, libraries, except for those which were privately endowed or were located in private educational institutions, were now primarily supported by public taxation. Thus, they were placed in the ambiguous position of enjoying public support at the same time as their liability to public criticism increased.

This latter point is an especially important one in light of the Commission's National Program. The Commission has noted the considerable fragmentation and unevenness of local

library development. "This fragmented development," the Commission comments, "will lead to waste, duplication, and the inefficient use of the total national resource." Waste, duplication, and inefficiency are the catchwords of economics, which may not be in this case the proper subject to explain or rationalize the uneven growth of American libraries. Looked at in another way, the very unevenness of library development attests to the autonomous nature of local library governance and can be correlated to a latent dread evident still in library administrators and in schoolmen: the fear of Federal control. Anxious as they are for an increase in Federal dollars, the nation's educators continuously look for reassurance on this score. Even as late as 1972, in outlining his educational reforms, the "one fundamental principle" enunciated by President Nixon "with which there can be no compromise" was that "local school boards must have control over local schools."

The matter of local versus Federal control will be referred to later in this paper in the section dealing with recommendation and legislative safeguards. Here, it is sufficient merely to note that in the absence of any national government agency on which librarians might have relied in the selection of materials, especially those of a controversial nature, the void has been filled by the librarians' national professional association. Since the United States is governed

under a federal governmental system rather than a unitary one, librarians have turned to the American Library Association when in need of national leadership or support for individual libraries in their struggle against censorship.

It was precisely this need to aid beleaguered community libraries which prompted the Association's initial adoption of the Library's Bill of Rights. During the late 1930s a rash of local incidents broke out concerning the suppression of John Steinbeck's The Grapes of Wrath on the grounds of alleged obscenity. So pervasive were the attacks that the Council of the American Library Association adopted as its statement of policy the Library's Bill of Rights during their annual deliberations in 1939 in San Francisco, California. The statement was adapted from one previously formulated and adopted by the Des Moines Public Library the year before. Originally comprising three articles which stressed the library's role "as an institution to educate for democratic living," the document has been periodically revised, and today, the Library Bill of Rights remains the Association's most important single policy statement relating to the role of the library in protecting the life of the mind. (See Appendix A for the text of the Library Bill of Rights.)

One year after the adoption of this policy, the Association established the Committee on Intellectual Freedom

to Safeguard the Rights of Library Users to Freedom of Inquiry. This Committee, now known as the Intellectual Freedom Committee, is charged with the recommendation "of such steps as may be necessary to safeguard the rights of library users, libraries, and librarians, in accordance with the First Amendment to the United States Constitution and the Library Bill of Rights. . . ." In 1967 at the behest of the Committee and other concerned librarians, the Association established an office to work with the Committee in the general area of intellectual freedom. The Office for Intellectual Freedom is maintained in the headquarters of the American Library Association in Chicago, Illinois.

In the years following the adoption of the Library Bill of Rights librarians found that efforts to suppress books and other materials were confined in general to two distinct areas: the allegedly seditious and the allegedly obscene. Library-owned films purporting to espouse the Communist cause came under fire in 1951 in incidents which proved to be auguries of the purgings of materials with a so-called Red slant instigated by the demands of the late Senator Joseph R. McCarthy and his Senate Subcommittee on Investigations.[7] Under particular attack were the overseas information libraries sponsored by the U.S. Department of State. During a "nightmarish" spurt of activity, several hundred books by more than forty authors were removed

from the shelves of these libraries by order of the Department of State. The mood of Washington hysteria undeniably permeated the local scene, and in what can only be termed a citizen's vigilante movement pressures mounted on local school and public libraries to either rid their shelves of materials by Communist sympathizers or else label them accordingly. Lists of books including those by such notable authors as Thomas Mann, Norbert Wiener, and Albert Einstein were bandied about by citizens' groups concerned over the so-called "Red Menace."

In the spring of 1953, at a time when resistance to McCarthyism required considerable courage, a small group of publishers and librarians met in Rye, New York, to consider ways and means to counter the vicious effects of this new threat to American liberties. From this meeting emanated the statement on "The Freedom to Read," which affirmed that the public interest is best served when publishers and librarians "make available the widest diversity of views and expressions, including those which are unorthodox or unpopular with the majority." (See Appendix B for the text of the Freedom to Read.) The success of this joint effort uniting the concerns of publishers and librarians can only be attested by the letter sent by President Dwight Eisenhower to the American Library Association convention in June of that year. "We must in these times," the President wrote, "be intelligently alert not only to the fanatic cunning

of Communist conspiracy--but also to the grave dangers in meeting fanaticism with ignorance." The Freedom to Read statement and the work of its drafters received considerable national publicity and endorsement by rational men. Ultimately, the McCarthy movement was perceived as what it was, fanaticism of an American not Soviet brand. As the New York Times editorialized:

> Little men with narrow minds and with great lust for power have tried to dictate to us. To many of us, and obviously to those who drew up the Library Association's documents and those who voted to endorse them, these censors are in contempt of the most sacred traditions of American freedom. . . .[8]

The period of the 1960s brought with it a threat of another cast: the purging of works presumed to be obscene. Ironically, most of the hue and cry was raised about books that could hardly be considered modern. The reissuance of John Cleland's eighteenth-century novel, Memoirs of a Woman of Pleasure, better known as Fanny Hill, and the publication of Lady Chatterley's Lover and Tropic of Cancer, both of them works reissued twenty-five years after their original publication dates, provoked a rash of activity involving Federal postal inspectors, local district attorneys and prosecutors, and citizens' decency committees. The greatest storm was precipitated over the Tropic of Cancer, and reports of either legal or community pressure to prohibit the sale of the book

or its circulation from libraries were made by librarians from east to west. The animus created by the book amounted to a cause célèbre, with the high courts in the various States of the Union promulgating totally different opinions. The case was ultimately reviewed by the U.S. Supreme Court, and Tropic was determined not to be obscene on June 24, 1964. A conference stimulated by this and other cases and sponsored by the Intellectual Freedom Committee in Washington, D.C., during the following year eventually led to the creation of a fully staffed Office for Intellectual Freedom established by ALA in 1967.

The decade of the 1970s introduced a host of new problems, or better said, old problems in new dress. The President's Commission on Obscenity and Pornography, whose original membership had been appointed by President Johnson in 1968, published its report* in the fall of 1970. Hardly had the ink dried on its pages when the Senate voted on October 13 in a 60 to 5 vote to reject its findings. President Nixon, a "law and order" president, to all intents and purposes ignored it, and Vice

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*The report of the President's Commission was not the first such document to appear under Federal auspices. In 1952, the Select Committee of the House of Representatives on Current Pornographic Materials, the so-called Gathings Committee after the name of its chairman, had issued a report. Then again, in 1956, the Senate Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, chaired by Senator Estes Kefauver, issued an interim report on the effect of obscene and pornographic literature on youth.

President Agnew promised the American public that "as long as Nixon is President, Main Street will never be Smut Alley."

Drawing on its enormous body of empirical studies, the Commission could find no evidence of causal relations between pornography and anti-social behavior, and as a consequence recommended the repeal of "all Federal, State, and local legislation prohibiting the sale, exhibition, or distribution of sexual materials to consenting adults." Minors were exempted from this recommendation. Whether or not the adverse political reaction prompted by the Commission's work influenced subsequent Supreme Court decisions in the area of the obscene is only a matter of conjecture, but within a few short years the U.S. Supreme Court in a series of five rulings handed down on June 21, 1973, substantively altered previous high court definitions of what constituted the obscene and how purveyors of obscene matter should be treated in criminal proceedings.

The findings in precedent cases, such as Roth v. United States, decided by the Supreme Court in 1957, and Jacobellis v. Ohio, 1964, were changed by the new rulings, sometimes referred to as the "Miller rulings," after the name of one of the major decisions among the five, Miller v. California. First, the rulings negate the concept of a nation-wide standard, requiring trial jurors to apply "community" standards which they may determine themselves. Community

standards, then, could mean those applicable to any State, territory, or locality, village, township, county or other jurisdiction comprised within the United States. Secondly, the prosecutors of allegedly obscene works do not need to introduce expert testimony. The defense may introduce expert witnesses, but their testimony may be disregarded; in effect, the burden of proof is thus shifted from the prosecution to the defense. And lastly, the prosecutor need do no more than submit the allegedly obscene work to the jury, which in turn will decide, according to the standards of the "average person" in the community, whether or not the work is sufficiently "serious" to merit First Amendment protection.

In his dissenting opinion to the June 21 decisions, Associate Justice William O. Douglas, long the Court's most outspoken foe of censorship, noted:

> What we do today is rather ominous as respects librarians. The net now designed by the Court is so finely meshed that taken literally it could result in raids on libraries. Libraries, I had always assumed, were sacrosanct, representing every part of the spectrum. If what is offensive to the most influential person or group in a community can be purged from a library, the library system would be destroyed.[9]

The library profession lost no time in submitting their protest. On June 26, the American Library Association passed a resolution to petition the Supreme Court for a rehearing of its decisions. The litigation was to be taken up on their behalf by the Freedom

to Read Foundation.* And on July 16, legal counsel for the Foundation filed an amicus curiae brief for the petition, which the Court subsequently denied on October 9.

Since the NCLIS National Program is committed to the concept of a nationwide network, one question raised by the brief should prove of particular interest:

> Where a library, for example, a state or regional library, serves more than one community having varying laws governing obscenity, what contemporary community standard is to be applied? The answer to this question directly affects the stocking and operations of inter-community bookmobile programs, interlibrary loan policies and policies governing the issuance of library cards to nonresidents. These programs, long supported by educators and encouraged by state, local and federal government, are all designed to maximize library resources and reduce taxpayer costs.[10]

"Beyond question . . .," the brief continued, "confronted with the prospect of meeting different and potentially conflicting 'contemporary community standards,' librarians will restrict their collections and services to a single community."

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*The Freedom to Read Foundation is not an official part of ALA. Incorporated in 1969, the Foundation supports the freedom to read largely through undertaking litigation, filing amicus curiae briefs, and other legal matters. Their most striking undertaking so far was financing the filing of a class action suit on May 5, 1972, in U.S. District Court for the Central District of California. The suit asks for an injunction against law enforcement agents to prevent prosecution of librarians under the California "harmful matter" statute which prohibits harmful matter to minors. The case, known as Moore v. Younger, is still in litigation.

The displacement of nationwide standards for those of local jurisdictions took place almost at once, and on July 2, 1973, the Supreme Court of Georgia affirmed the conviction of an Albany, Georgia, theater owner for showing the film, Carnal Knowledge. On June 24, 1974, the Supreme Court handed down its decision in the Georgia case. Not without irony, First Amendment and Constitutional lawyers heard the Court reverse the Georgia conviction. In this latest opinion, the Court seemingly went full circle backing away from local decision-making by noting that community jurors do not "have unbridled discretion in determining what is patently offensive." Since in the Court's latest interpretation Carnal Knowledge was not obscene and could be shown in Georgia as elsewhere in the country, the American public seemingly is still left with what Associate Justice Brennan once so rightly characterized as "the mire of case-by-case determination" of what is licit or illicit in books, films, illustration, or other materials.

Pandora's box having been opened, however, state and local jurisdictions lost little time in introducing new or amended legislation to bring state and community statutes into conformity with the Supreme Court's rulings of 1973. Within the last two years, 38 state legislatures have considered over 150 bills relating to the obscene, some of which contain exemptions for libraries, museums, and other educational

agencies, while others do not. During this period, the activities of the national library association have been largely those of aiding state and local librarians in lobbying activities in their respective legislatures. In some cases, these have been eminently successful and librarians have been instrumental in defeating extremely proscriptive legislation. At best, if bills are to be enacted librarians are urged to seek exemptions from prosecution for librarians employed in disseminating materials and to ensure that provisions for "in rem" proceedings be included in the statutes. "In rem" proceedings require that civil proceedings be initiated to determine whether challenged books or materials are obscene before criminal proceedings are instituted against the distributors.

The mid-1970s, then, present a very mixed picture of library involvement in the intellectual freedom area. Although overt legal pressure may not be brought against libraries and bookstores, the Supreme Court's rulings have already provoked what is sometimes called "a chilling effect" in that both the originators and publishers of creative works, especially those having sexual candor, as well as those who sell or disseminate them have really no way of determining the extent of their legal liability and also the limit of their Constitutional protection. Since the Supreme Court has never provided a precise definition of obscenity, those engaged professionally in the dissemination

of materials containing matter which might be construed as prurient or harmful are left to wade in somewhat judicially muddied waters.

Then too, the Supreme Court's rulings have undeniably contributed toward a furtherance of a conservative climate of opinion. Especially hard hit by this have been school libraries, where teen-age novels and other books dealing with the drug culture, pre-marital sexual relations, ghetto life, and other aspects of modern culture have been increasingly under attack from parents, school boards, and community organizations. The novels of John Steinbeck and Kurt Vonnegut, the works of ethnic authors such as Claude Brown, Piri Thomas, or Eldridge Cleaver, and even dictionaries of English and American slang and unconventional language usage have been singled out for suppression in local schools across the country. What is particularly vicious about many of these actions is that the complainants frequently cite the offensiveness or crudity of language as their objection while obscuring the real rationale for their censure of these books, their own personal reaction against the modernism of society and its seeming permissiveness.

After one of the most distasteful of these school censorship incidents, which involved the burning of thirty-two copies of Kurt Vonnegut's novel, Slaughterhouse-Five, in Drake, North Dakota, the New York Times (November 16, 1973) made this

comment:

> What happened offers a striking example of a perennial question in American public education: How are the requirements of free inquiry and academic freedom to be balanced against the dominant mores and values of the community?

It is a question yet unresolved, but certainly one that deeply concerns the custodians of "the nation's most basic First Amendment institution," the American library.

The Right to Privacy

In projecting its ideas for an integrated nationwide network, the National Commission also cites as an area of concern, in addition to intellectual freedom, the assurance of personal privacy. The word "privacy" does not appear in the Constitution, yet it is inherent in many of its amendments:

> The first amendment shields individual freedom of expression, religion, and association from an officious government. The third, fourth, and fifth amendments forbid unwarranted governmental intrusion into the private persons, homes and possessions of individual citizens. The ninth amendment expressly reserves to "the People" rights, such as privacy, not enumerated in the Constitution. The fourteenth amendment's guarantee that citizens cannot be deprived of life, liberty or property without due process of law, provides an additional bulwark against governmental interference with individual privacy.[11]

In early judicial writings on the subject, which did not appear until the late nineteenth century, the right of privacy was sometimes referred to as "the right to be let alone." Privacy, as a Constitutional issue, however, did really not come to the

fore until technology made it possible to circumvent individual privacy through secretive uses of telephone and telegraph wires, cameras, sound recordings, microphones, and other devices. At the outset, employment of such means was primarily restricted to law enforcement agencies engaged in detecting criminal activity.

With the advent of computers, however, a new dimension was added to the matter of electronic surveillance. Banks, businesses, and of course government itself were now able to collect, codify, and manipulate innumerable records many of which contained personal information that could be used in ways harmful to the person from whom it was obtained.

To say that advanced technology has been made the unwitting accomplice of much that is injurious to individual privacy is not, of course, to say that advanced technology is not providing a great boon to modern society. The flow of computerized data obviously facilitates contemporary governance; the recognition of the needs of our elderly citizens, the identification of economically disadvantaged children among our school population, and the determination of health care requirements are all matters which call for data. The problem then does not lie with the use of the computer, but rather with its misuse.

Ironically, the greatest hue and cry over the misuse of computerized information arose over a perfectly legitimate

inquiry into the uses of government data for scholarly research. In 1965, in the so-called Ruggles Report a recommendation was made that the Bureau of the Budget take steps to establish a Federal Data Center. Richard Ruggles, professor of economics at Yale University, had been asked some years before to chair a Committee on the Preservation and Use of Economic Data that was sponsored by the Social Science Research Council at the behest of the American Economic Association. The idea for the study had grown out of the need of academicians and other researchers for data in machine readable form from government agencies. What the Ruggles committee had envisioned was a kind of clearing-house to which scholars could make application for information pertinent to their studies.

The Bureau of the Budget, confronted with this suggestion, soon commissioned a study of its own to analyze the recommendation and determine its feasibility. As word of these documents circularized through Washington, a concerned Congress began to look into the question of invasion of privacy. In 1966, shortly after the issuance of the Ruggles report, both the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary and the Special Subcommittee on Invasion of Privacy of the House Committee on Government Operations held hearings about the proposed Data Center, which was termed by one senator a "single machine age

information reservoir." Although the academicians made a brave stand before these committees, the Congress remained somewhat skeptical. In 1967, the Senate instituted a second series of hearings and even changed their title from the 1966 title of "Invasions of Privacy" to "Computer Privacy." Clearly, the computer was coming into its own as the focus, if not the villain, of the piece.

In 1968, with its report on "Privacy and the National Data Bank Concept," the House Committee on Government Operations advised against establishing the data bank center until all of the questions regarding individual privacy could be resolved. The Congressional debates over the data bank concept served their purpose, however, in stimulating Congressional inquiry into the matter of government control over data files. Such inquiry continues, perhaps most markedly by the Constitutional Rights Subcommittee of the Senate Committee on the Judiciary, under the chairmanship of Senator Sam J. Ervin, Jr. In 1969, this Subcommittee held hearings on "Privacy, the Census, and Federal Questionnaires"; in 1971 on "Federal Data Banks, Computers, and the Bill of Rights"; and in 1974 issued several volumes of a study on "Federal Data Banks and Constitutional Rights." The 1974 document contains information about 858 data banks maintained by over 50 agencies of the Executive Branch of the Federal Government.

The library profession had relatively little to do with these matters at the national level. With the exception of a scant number of libraries in private industries or else supported by a few prestige academic institutions or the Federal government itself almost no library in the country possessed the kind of machine-readable records with which the Congress was concerned. In 1970, a series of incidents did occur, however, to which the library profession reacted very strongly. In the Spring of that year several public libraries in very large American cities reported that Internal Revenue Service agents of the U.S. Treasury Department were requesting permission to examine reader files to determine persons interested in materials on explosives. Such visits were reported in Milwaukee, Cleveland, Atlanta, and Richmond, California. On July 21, the ALA Executive Board issued an emergency advisory statement urging libraries to maintain the confidentiality of their circulation records. In the Board's opinion, "the efforts of the federal government to convert library circulation records into 'suspect lists' constitute an unconscionable and unconstitutional invasion of the right of privacy of library patrons. . . ." On behalf of the librarians, Senator Ervin sent a letter to the Secretary of the Treasury expressing concern over these governmental inquiries. "Throughout history," the Senator wrote, "official surveillance of the

reading habits of citizens has been a litmus test of tyranny."

The Secretary replied to Senator Ervin on July 29 that the inquiries had been made to "determine the advisability of the use of library records as an investigative technique to assist in quelling bombings. That survey . . . has terminated and will not be repeated." Somewhat omniously, the Secretary added, however, that "it is our judgment that checking such records in certain limited circumstances is an appropriate investigative technique. . . ."

The matter attracted national publicity, and on July 31, the New York Times commented: "To its watchful librarians the country owes a vote of thanks. To itself it owes an alertness against any repetition of the IRS's deplorable venture." In December, the ALA's Intellectual Freedom Committee formally adopted a "Policy on Confidentiality of Library Records," which the ALA Council endorsed during its midwinter meeting in January of 1971. (See Appendix C for the text of this Policy.)

Although this particular affair seemed quiescent, governmental encroachment in the Nixon Administration on all First Amendment liberties continued unabated. On June 22, 1971, during their annual convention, the librarians adopted a resolution supporting the right of the New York Times and other major American dailies to print the text of the Pentagon

Papers, a right sustained by the U.S. Supreme Court a few days later. At that same meeting, the librarians heard two library staff members from Bucknell University, where Boyd Douglas, the governmental informant in the Berrigan case was taking course work, describe the effect of governmental surveillance within the campus. Subsequently, one of these librarians subpoened to appear at the trial of Father Berrigan refused to testify in protest over the misuse of governmental power. Since again borrowers' records were of interest to government agents, the Association in a "resolution on governmental intimidation" once more asserted that "no librarian would lend himself to a role as informant, whether of voluntarily revealing circulation records or identifying patrons and their reading habits."

That same year the problem of the Pentagon Papers' publication came up once more, but in another guise. The Beacon Press, the publishing arm of the Unitarian-Universalist Association, had undertaken the publishing of the Papers, having obtained for this purpose the text from Senator Mike Gravel. In a move, unknown either to the Press or to the Association, FBI agents, acting under a subpoena, removed records of checks paid to the UUA from a Boston bank to determine the names of the Association's contributors. On November 5, the day after the bank informed the UUA of the

investigation, Senator Gravel brought contempt proceedings against the Federal government in the U.S. Court of Appeals. The legal issues regarding this case were manifold, including the question of Senatorial immunity, separation of Church and State, the freedom of the press, and the freedom of association. A concerned library profession issued a resolution in support of the Beacon Press and the UUA in January of 1972, and Dr. Robert Nelson West, president of the UUA, addressed the ALA convention at one of the largest meetings ever convened by the Intellectual Freedom Committee. Although the Supreme Court ruled in the Gravel case on June 29, its decision related only to the issue of Senatorial immunity and not to the First Amendment aspects of the UUA's position since these were not before the Court.

The litany of First Amendment abuses continued throughout 1973 and 1974 and ended in the sorry chapter known as the Watergate affair. So gross were the violations of all Constitutional rights, including wire-tapping, burglary, prior restraint of printed matter, the politicizing of the grand jury system, and the increase of non-criminal intelligence gathering by government agents that many Americans believed that 1984 was indeed at hand.

The Right to Know

There is one other aspect of the freedom of expression which bears on the NCLIS National Program, although it is no where specifically mentioned, and that is the "right to know." Thomas I. Emerson, professor of law at Yale University, comments:

> There are two principal aspects of the right to know. One is the right of a person who seeks to communicate with others to have access to information that will assist him in formulating his expression. The other is the right of members of the public to listen to, read, or observe communications originating with others. Abridgements of the right to know may occur through any interference with the gathering of information or any withholding of information. But the constitutional problems under the First Amendment arise, presently at least, when the interference or withholding is done by the government.
>
> That the First Amendment extends its protection to the right to know is by now fully recognized. The first clear holding came in 1965 when the Supreme Court held invalid a Federal Statute which provided that persons wishing to receive communist political propaganda from abroad had to send the postal authorities a form expressly requesting delivery. By 1969 the Court was saying that "it is now well established that the Constitution protects the right to receive information and ideas." And the following year, in its decision upholding the fairness doctrine and the equal time provision, the Court remarked: "it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." Thus the starting position is well set.[12]

Yet, as Professor Emerson points out, recent rulings of the Burger Court have not tended to enlarge the doctrine. Not only has the Court rejected the claims of journalists to protect the

confidentiality of their sources, it also declined to review a lower-court decision upholding an injunction against Victor L. Marchetti, whose book on the CIA published this year was subjected to governmental prior restraint.

Congress recognized the public's "right to know" with the passage of the Freedom of Information Act in 1966 requiring that government records be made available to the public, but this permissiveness is hedged by a number of restrictions on materials whose secrecy must be protected in the interest of foreign policy or the national defense. Unless the present system of government classification is radically altered, the Freedom of Information Act is relatively impotent in forcing a resistent government to air publicly its records.

Recommendations and Legislative Safeguards

Up to this point, this paper has traced the historic development of the library profession's increasing concern for the protection of Constitutionally sanctioned liberties: the right of full freedom of expression, the right of privacy, and the right to know. With regard to intellectual freedom, the profession, primarily through the work of the ALA, has repeatedly strengthened its anti-censorship stance. Testimony before Congressional committees favoring protective "shield laws" for journalists, submission of briefs to the courts in

certain key test cases, and dissemination of strongly worded resolutions and policy position papers to the national press are but a few of the activities carried on by librarians in defense of the freedom of the mind. Thirty or forty years ago, the profession saw its role as one largely restricted to the defense of library materials per se; today, that perspective has been considerably enlarged, and librarians have joined with representatives of the publishing industry and the broadcasting media to defend works under legal or extra-legal attack, even those which would not be found in libraries. The amicus curiae briefs submitted to the Supreme Court on behalf of the ALA in the Carnal Knowledge case, involving a commercially distributed film, and in the case of Kaplan v. California, in which the book in question had no literary or other merit, are but two examples of the profession's recognition of its enlarged responsibilities.

With regard to the protection of the confidentiality of library records, the profession's experience in this area is still somewhat limited. The incidences of legal or quasi-legal censorship far outnumber the cases dealing with invasions of users' privacy. Officially the Association has recommended that librarians not make available records identifying their users with specific materials until the library is served with an order or subpoena made by a court of competent jurisdiction.

As far as the "right to know" is concerned, the profession again has had little experience. As a judicial concept, this right has been invoked only in recent years as evidence of government secrecy in the conduct of both foreign and domestic affairs outraged the American public. The suppression of the Pentagon Papers, which brought before public scrutiny the entire spectrum of repressive government classification, and the prior restraint case concerning the Marchetti book did stimulate, however, professional activity in the "right to know" sphere.

Members of the Commission may wonder what relationship these libertarian activities and positions of the library profession have to their projected plan for a nationwide network. Sensing the natural fears of the profession regarding Federal intervention in what has primarily been a locally governed service, the drafters of the National Program assert that "the nationwide network would not be federally operated or controlled, particularly, that there would be no federal control whatsoever over the information content flowing over the lines." Yet at the same time, the Commission urges the Federal government to support the network; it is in this matter, the balance between Federal support and Federal control, that the problem lies.

As with most problems, there are several aspects, some of which are philosophical and others practical. What follows should not be construed by members of the Commission as formal recommendations on the part of the author but rather as suggestions for a closer examination of the Commission's basic assumptions about the present state of libraries and proposals for future activity involving them.

It should also be remembered that the author of this paper is not an engineer, information scientist, or computer technologist. As a librarian, however, with some sensitivity to the historic role of libraries in the preservation of the life of the mind in America, the author does view the descriptors which the Commission uses to describe "library problems," i.e., their unevenness, fragmentation, and independent evolution, with a sense of uneasiness. This sense only grows when the Commission further amplifies these problems as reflecting "major deficiencies which need correction." Language such as this seems unduly pejorative. In light of the history of this nation with its Constitutional precedent that education was a right reserved to the States and to the people, one is left to wonder how the public schools and the tax-supported libraries could have developed in ways other than evolutionary or fragmented. The effort to form libraries in the new nation as instruments for the "diffusion of knowledge" coincides with the foundation of the Republic, and even Benjamin Franklin himself recognized that the libraries of the New World ". . . contributed in some degree to the stand so generally made through the colonies in defense of their privileges."

None of the above is meant to imply that the Commission prepare an historical document, but it is meant to suggest that the drafters of the National Program might exhibit greater

sympathy for the historic reasons why libraries are so presently fragmented. And one of the major reasons is precisely that sense of independence which permeated the early educational institutions of the country and left them free to carry out their afrairs without the interference of a nationally dominated educational system. Even as late as 1965, when the Elementary and Secondary Education Act provided funds for school library development, the statute specifically read:

> Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control . . . over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system. . . .

Such language may be only the vestigial remnant of an earlier era when man still recalled the tyranny of princes, but that the independence of the local school still requires restatement even in the twentieth century attests to the vitality of a long-held sentiment that education in the United States is and should be a matter of local control.

And it is precisely that sentiment which governs the fifth of the Commission's five assumptions that "legislation can be devised for the coherent development of library and information services that protects personal privacy and

intellectual freedom, and preserves maximum possible local, state, and regional autonomy."

Words or phrases such as "privacy," "freedom" of the mind, and governmental "autonomy" can only be described as charged with philosophical, emotional, and historical connotations. In a strictly historical sense, it is somewhat absurd to speak of new enactments protecting such concepts, for the Bill of Rights protects them all. If the Commission were to agree to this interpretation then the new legislation must be devised not merely to protect or safeguard these Constitutionally guaranteed rights; instead, it must be designed not to interfere with them. The rights are already protected; it is the Commission's responsibility to suggest the legislative pattern that will not and cannot circumvent them. "Nothing contained in this Act shall be construed . . ." is an infinitely stronger wording than ". . . This Act shall protect and preserve the rights of local school agencies. . . ." Furthermore, since it is obvious that privacy and intellectual freedom are individual rights and that autonomy here refers to the rights reserved to a governmental unit, their conjunction within the same assumption presents some difficulties in reworking these concepts within a single sentence. It seems preferable to separate these ideas, rewording the fifth assumption to read: "Fifth, that legislation devised for the

coherent development of library and information services will in no way interfere with the Constitutionally protected rights of personal privacy and intellectual freedom"; and adding, as the sixth assumption: "no portion of the proposed legislation shall be construed as mandating or enforcing local, state, or regional participation." In this way, a governmental unit choosing not to join the network is in the best of all possible positions to preserve maximal autonomy.

Even if the wording of the Commission's assumption were to be changed, however, the next question would be: "Is it possible to design legislation guaranteeing the protection of all these rights?" In the absolute sense, the answer is no. Revered as is the Constitution itself, its text has been amended and subjected to countless judicial changes in interpretation. No legislation could ever be designed whose intent could not at some time or in some place be altered or even thwarted. The purpose of this paper, with its retrospective view of the problems faced by librarians and their users in the protection of their rights, was to illustrate to the Commission that threats to civil liberties are not a concomitant of a technological age. They have existed for generations. The bank records of the Unitarian Universalist Association may have been easier for the FBI to examine because they were in machine readable form, but the principle at stake

was identical to the case involving the circulation records of libraries maintained on film or in manually indexed files which officious IRS agents demanded to see. Neither appointment nor election can ever prevent the zeal of a postal or customs inspector or even a district attorney or jurist from sometimes pushing him beyond the limit of his constituted powers in the censorship of a book or film. Over-zealousness is a characteristic of men, not machines.

Throughout its document, the Commission seems to imply that the computerization of data represents some new threat to individual liberties. This paper has been at pains to point out, however, that formating records in machine readable form makes them easier to examine but it does not substantively change the principle which protects their confidentiality, whether such records reveal income, or medical impairment, or reading interests.

If there is a threat to civil liberties in the proposed nationwide network, it does not lie merely in the presence of more sophisticated technology; it lies in the fact that at least occasionally materials circularized by a network subsidized by the government could be construed as being in opposition to the government itself. As Professor Emerson has noted:

Government funding to support the system of freedom of expression occurs on a wider scale than is generally recognized. The Presidential Election Campaign Fund Act makes direct provision for the use of tax money for financing political campaigns. . . . Other forms of government aid are provided by direct subsidy. These include many kinds of government grants for educational and research purposes; funds for public broadcasting; and OEO funds for community action projects and legal services. These funds have frequently been used to finance expression in opposition to government policies and projects. This is one of the most significant developments in the system of freedom of expression over the last several decades. It offers the possibility of solving, in part at least, the distortions in the system that arise from the inequalities of financial resources among those who wish to exercise their rights to expression.

Unfortunately the Nixon Administration, and its counterparts in some of the States, have moved to curtail drastically, or cut off entirely, this promising development. Whether these officials feel unable to face the music, or simply fail to understand the significance of funding opposition, is not clear. In any event the Nixon Administration has sharply reduced the funds for public broadcasting and attempted to take over control. It has similarly acted to liquidate OEO and eliminate many of its activities, including a good part of the legal services program.

These actions of the Nixon Administration raise the question whether workable legal and governmental principles can be formulated to control the distribution of government funds designed to promote expression in opposition to the government itself. Clearly a structure must be set up whereby the government has no control over the content of the expression. At the same time the government must have some leeway in selecting the area for subsidy and the recipient. It may be that principles of academic freedom can be applied in reconciling these competing interests. And it may be that institutional devices, such as a council of honest citizens, can be employed to isolate the distribution and use of government funds from

> pressures. In any event this is an area which requires much thought and attention.[13]

As an aside, it might be noted that the support for informational resources might well have been added to Profession Emerson's list of drastically curtailed activities.

The facsimile of a page from an underground newspaper; an editorial critical of a governmental administration requested by a reader in another city; a political cartoon; a novel banned in one community but asked for by another: Are these to be attacked and could their requesters be investigated? Inasmuch as the network will ultimately facilitate the public's right to know, then simultaneously a more informed electorate will represent a considerable threat to any administration at whatever level of government bent on retaining its power and control. Such a statement may seem too disquieting, but the record of the past few years has certainly left many doubts and questions concerning the integrity of government.

As far as the issue of computer privacy is concerned, it certainly lies within the realm of possibility that legislative safeguards could be adopted. In a discussion of privacy and data banks, Alan F. Westin has observed:

> . . . a network of legal controls is absolutely essential. For example, a federal statute could specify that the data put into a statistical center is to be used solely for statistical purposes. It

> could forbid all other uses of the data to influence, regulate, or prosecute anyone, making such use a crime, and excluding all such data from use as evidence in judicial or governmental proceedings. It could forbid all persons other than data center employees to have access to the files, and the data could be specifically exempted from subpoena. An Inspector General or Ombudsman-type official could be set up to hear complaints about alleged misuse, and judicial review for such complaints could be provided for.*

The question remains, however, as to who would serve as the inspector general or ombudsman if it is government itself which wishes to suppress the content. Senator McCarthy had no difficulty ridding government libraries of "subversive" books; the Burger Court in recent decisions has ruled very conservatively in matters which affect materials demonstrating sexual candor; and even as late as November of this year President Ford vetoed amendments to the Freedom of Information Act, which would have increased the rights of citizens to further their knowledge of government activities. To this last question, there are simply no easy, pat, or simple answers.

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*Alan F. Westin, "Civil Liberties Issues in Databanks," in Information Technology in a Democracy, ed. by Alan F. Westin (Cambridge, Mass.: Harvard University Press, 1971), 308-9. This brief paragraph is taken from a ten-paged article which the author found pertinent and concise on the civil libertarian aspects of databanks. Because it might have seemed an infringement of copyright, the author did not take the liberty of reproducing the whole in the Appendix. The Commission, however, may wish to examine the piece in its entirety, and the appropriate permissions could be sought.

Safeguarding the right to intellectual freedom has been the business of this Republic since the Bill of Rights was adopted. In the main, the record has been one in which the government has trusted in the wisdom of the people to decide for themselves what they should read or examine and what they should lay aside. There have been, of course, some very grave exceptions, and the nation has gone through the excesses of Comstockery, McCarthyism, and, sadly to say, the Constitutional abridgments of the Watergate years. At this writing, it is simply anyone's guess as to whether or not the proposed national network can achieve that delicate balance of power between governmental subvention and government control in ways that are tolerable both to those governing as well as to those governed. The Commission should also be mindful that the intellectual freedom to which they refer covers not only the rights of the users of their proposed network, but also those whose messages and materials will be transmitted by it. As publisher William Jovanovich has observed, "Intellectual freedom is not, in the long view, measured by readers, but by writers."[14] If only "safe" and uncontroversial data and information can be transmitted through its nodes, the nation-wide network will remain a model of ingenuity and efficiency--and little else.

"A popular government, without popular information, or the means of acquiring it," James Madison once wrote, "is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors, must arm themselves with the power which knowledge gives."[15] Surely, such words must still have meaning in these troubled and troublesome times.

FOOTNOTES

[1]J. P. Kondakov, "Library Services for a Nation Covering a Large Geographical Area: The Soviet Union," Libri, 17, no. 3 (1967), 204.

[2]San Antonio v. Rodriquez, 411 U.S. 1.

[3]James S. Coleman, et al., Equality of Educational Opportunity (Washington, D. C.: Government Printing Office, 1966).

[4]Since copyright is being afforded treatment in other papers commissioned by NCLIS, it will not be addressed in this paper.

[5]William D. North, Amicus Curiae Brief for the American Library Association in the case of United States v. Hamling, U.S. District Court, Southern District of California, no. 10791, 2.

[6]Sidney Ditzion, Arsenals of a Democratic Culture (Chicago: American Library Association, 1947), pp. 186-87.

[7]For a detailed account of libraries during the McCarthy era see Everett T. Moore, "Intellectual Freedom," in Research Librarianship: Essays in Honor of Robert B. Downs, ed. by Jerrold Orne (New York: R. R. Bowker, 1971), 1-17.

[8]Quoted in Moore, op. cit., p. 16.

[9]William O. Douglas, dissenting opinion, Paris Adult Theatre I v. Slaton, Slip Opinion, 71-1051, 3.

[10]William D. North and E. Houston Harsha, Amicus Curiae Brief for the American Library Association in the case of Kaplan v. California, U.S. Supreme Court, no. 71-1422, 4.

[11]U.S. Congress, Senate, Subcommittee on Constitutional Rights of the Committee on the Judiciary, Federal Data Banks and Constitutional Rights, 93rd Cong., 2d sess., 1974, vol. 1 (ix).

[12]Thomas I. Emerson, First Amendment Overview, a paper delivered at the Conference on American Freedom held in Washington, D. C., April 10-11, 1973. Mimeographed, 20.

[13]Ibid., pp. 22-23.

[14]William Jovanovich, Now, Barrabas (New York: Harper, 1964), p. 9.

[15]James Madison, Letter to W. T. Barry, Aug. 4, 1822, in The Complete Madison (New York: Harper, 1953), p. 337.

TABLE I

The table which follows is not intended to illustrate causal relations among the events in the three columns. In some cases there is such a relationship; in others there is not. The table is appended so that the reader can see the chronological development of certain activities and trends which are discussed in the body of the paper. The events are selective and should in no way be construed as reflecting <u>all</u> Congressional actions, judicial decisions, or professional library activities dealing with intellectual freedom and privacy during the last quarter century.

Chronology of Selected Events Involving the Rights of Intellectual Freedom and Privacy and the Actions of Librarians and the American Library Association: 1950 - to date

Date	Intellectual Freedom	Privacy	Actions of Librarians
1950-51	In the early 1950s, local libraries report that community pressure groups request publications to be "labeled" if they favor Communism.		ALA adopts a six-point statement on labeling, condemning the practice as a "censor's tool" on July 13, 1951.
1952	Select Committee of the House of Representatives on Current Pornographic Materials issues its report.		In June, ALA sponsors first conference on intellectual freedom in New York City.
1953	U.S. Department of State issues their first directive on March 18 to divest USIS libraries overseas of books by Communists and "questionable material" emphasizing Communism.		On May 2 and 3, members of the ALA and ABPC meet to discuss situation regarding obscene and subversive materials. Freedom to Read statement resulting from this meeting is adopted by both groups in June.

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1953 (cont'd)			ALA issues statement on overseas libraries at the June conference. President Eisenhower deplores "fanaticism" in June 24 letter to ALA president.
1955			ALA adopts the School Library Bill of Rights on July 8.
1956	Senate Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary issues interim report on the effect of obscene and pornographic literature on youth.		
1957	Supreme Court decides case of Roth v. United States.		

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1960		Social Science Research Council creates a Committee on the Preservation and Use of Economic Data, chaired by Richard Ruggles.	
1961	Tropic of Cancer, published on June 24, becomes a national cause celebre as book stores and libraries report legal and extra-legal pressures to remove it. Over 50 censorship cases reported.		
1962			ALA adopts statement: "How Libraries and Schools Can Resist Censorship" on Feb. 1; subsequent endorsement comes from ABPC, ACLU, NCTE, and NEA.

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1964	On June 24, Supreme Court finds Tropic not obscene. Decision in Jacobellis v. Ohio is handed down the same day.		ALA enters amicus brief with the U.S. Supreme Court in defense of Tropic of Cancer.
1965		Ruggles report recommends establishment of a Federal Data Center.	
1966	Supreme Court decides in favor of "Fanny Hill" on March 21. Congress enacts Freedom of Information Act.	Hearings are held in both Houses of Congress on computers and the invasion of privacy. House issues hearings.	
1967	Congress votes to establish President's Commission on Obscenity and Pornography on Oct. 3.	Computer Privacy, hearings before the Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, issued.	ALA establishes Office for Intellectual Freedom in Chicago, Ill.

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1968	President Johnson appoints 18-member Commission in Jan. with one librarian member.	House Committee on Government Operations issues report on Privacy and the National Data Bank Concept.	
1969			Freedom to Read Foundation incorporated in Nov.
1970	Report of the President's Commission published. Senate votes 60 to 5 to reject its findings.	U.S. Treasury Department enjoins IRS agents to search the circulation records of public libraries in Atlanta and Milwaukee to determine identity of those reading about explosives.	At request of the ALA, Senator Sam J. Ervin, Jr., chairman of the Senate Subcommittee on Constitutional Rights, makes inquiry of the Treasury Department Secretary, and IRS visits cease.
1971		Hearings held in the Senate on Federal Data Banks, Computers and the Bill of Rights.	On Jan. 20 ALA adopts Policy on Confidentiality of Library Records.

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1971 (cont'd)			Also in Jan., ALA adopts revision of its Policy on Loyalty Programs.
	On June 26, Supreme Court upholds right of the New York Times to publish the Pentagon Papers.		On June 22, ALA endorses resolution supporting the publication of the Pentagon Papers.
		To prepare for their case against the Rev. Philip Berrigan, government agents had shown interest in the activities of informer Boyd Douglas at Bucknell University. A library staff member subpoened to appear at the trial of Father Berrigan refuses to testify in protest over government intimidation.	Also in June, two librarians from Bucknell University of whom inquiries had been made by government agents introduce a resolution on Governmental Intimidation. ALA adopts on June 25. Included is the librarian's responsibility to protect the confidentiality of users' files. (Because of certain errors in the June 25 text, a revised version is adopted by ALA on Feb. 21, 1973.)

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1971 (cont'd)		In Oct., FBI agents acting under a subpoena remove records of checks paid to the Unitarian-Universalist Association from a Boston bank. Beacon Press, the UUA publishing house, is the publisher of the Senator Gravel edition of the Pentagon Papers.	
1972	Supreme Court holds that journalists are not protected by the First Amendment in withholding information about the sources of their stories.		In January, ALA indicates support of the Beacon Press and the Unitarian-Universalist Association. On May 5, Moore v. Younger, a lawsuit financed by the Freedom to Read Foundation, is filed in federal district court in California. At issue is the constitutionality of the State's "harmful matter" statute.

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1972 (cont'd)		National Science Foundation-sponsored study on Databanks in a Free Society, written by Alan F. Westin and Michael A. Baker, is issued.	On June 30, ALA goes on record deploring the action of the Federal government to restrain Victor L. Marchetti, a former CIA employee, from writing a book about the agency.
1973			On Feb. 2, ALA adopts a resolution on "shield laws," favoring legislation to protect journalists from having to divulge their sources.
	On June 21, Supreme hands down decisions in Miller v. California and four other cases dealing with obscene matter.		On June 26, ALA votes to petition the Supreme Court for a rehearing of June 21 decisions. Petition is filed on July 16. An amicus curiae brief is filed for the ALA in the case of Kaplan v. California, one of the five cases in the June 21 rulings.

Chronology (cont'd)

Date	Intellectual Freedom	Privacy	Actions of Librarians
1973 (cont'd)	On Oct. 9, Supreme Court denies the petition to rehear. Also in Oct., the Knopf publishing house files injunction to prevent governmental prior restraint of the Marchetti book on the CIA.		
1974	On June 24, Supreme Court hands down decisicn in the Carnal Knowledge case reversing the Georgia conviction of movie theater owner Jenkins.	Federal Data Banks and Constitutional Rights is issued by the Senate Subcommittee on Constitutional Rights.	An amicus curiae brief is filed on Jan. 24 for the ALA in the case of Jenkins v. Georgia (the Carnal Knowledge case). ALA announces major program meeting for June 1975 conference in San Francisco on computers and the right of privacy.

APPENDIX A: THE LIBRARY BILL OF RIGHTS

Library Bill of Rights

The Council of the American Library Association reaffirms its belief in the following basic policies which should govern the services of all libraries.

1. As a responsibility of library service, books and other library materials selected should be chosen for values of interest, information and enlightenment of all the people of the community. In no case should library materials be excluded because of the race or nationality or the social, political, or religious views of the authors.

2. Libraries should provide books and other materials presenting all points of view concerning the problems and issues of our times; no library materials should be proscribed or removed from libraries because of partisan or doctrinal disapproval.

3. Censorship should be challenged by libraries in the maintenance of their responsibility to provide public information and enlightenment.

4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

5. The rights of an individual to the use of a library should not be denied or abridged because of his age, race, religion, national origins or social or political views.

6. As an institution of education for democratic living, the library should welcome the use of its meeting rooms for socially useful and cultural activities and discussion of current public questions. Such meeting places should be available on equal terms to all groups in the community regardless of the beliefs and affiliations of their members, provided that the meetings be open to the public.

Adopted June 18, 1948.
Amended February 2, 1961, and June 27, 1967, by the ALA Council.